TEO CHENG HUA v. KER MIN CHOO & ORS

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
IDRUS HARUN JCA
BADARIAH SAHAMID JCA
[CIVIL APPEAL NO: J-02(IM)-512-03-2014]
2 JUNE 2015

CIVIL PROCEDURE: *Contempt of court – Interference with due administration of justice – Filing of second Form 75 under s. 281 Companies Act 1965 and second statutory declaration by liquidator – Whether contents of first Form 75 altered – Whether credible explanation furnished for alterations – Whether amounted to tampering with documentary evidence – Whether actions connected to litigation against liquidator – Whether interference with proper administration of justice – Whether constituted contempt of court*

Jotang Wires & Cables Sdn Bhd, ('the company'), had been wound up on 29 March 2011 pursuant to a court order and the appellant was appointed as the liquidator. The appellant filed a suit on behalf of the company against the applicants (the first and second respondents) the directors and shareholders of the company before it was wound-up, claiming the sum which the applicants had allegedly caused the company to make between 29 March 2011 to 27 May 2011 after the winding up of the company. The suit was however struck out by the High Court. Subsequently, the applicants sought to remove the appellant as the liquidator of the company ('the removal application') on the grounds that the appellant had failed to discharge his duties as the liquidator for the company *bona fide* in interest of all the relevant parties. The application was allowed and the appellant was removed as the liquidator for the company. The High Court Judge, *inter alia*, found that the appellant had changed Form 75 which he had earlier lodged with the Registrar of Companies pursuant to s. 281 of the Companies Act 1965 ('CA'), which was considered a grave misconduct and was tantamount to an interference with the ongoing court proceedings and was possibly contemptuous. Based on the cause papers which were filed for the removal application, the applicants filed an application for an order of committal against the appellant pursuant to O. 52 r. 4 of the Rules of Court 2012 ('ROC'). The affidavit-in-support of the application for leave under O. 52 r. 4 of the ROC showed that the applicants, in their affidavit-in-support of the removal application, had stated that the appellant had filed Form 75 ('the first Form 75') with a statutory declaration ('the first statutory declaration') with the Registrar of Companies. However, in reply to the applicants' affidavit-in-support, the appellant affirmed an affidavit wherein the appellant had exhibited a completely different Form 75 ('the second Form 75'). The grounds relied on by the applicants were, *inter alia*: (i) the appellant had tampered with the documentary evidence during the course of

litigation; (ii) the appellant made false statements under oath; and/or (iii) the appellant had intentionally tried to confuse the court and interfere with the administration of justice by changing the figures in the first Form 75 whilst litigation was under way. The High Court Judge found that the applicants had proven beyond reasonable doubt that the appellant had committed contempt of court by interfering in the proper administration of justice that had resulted in a real risk of prejudice to a fair and proper adjudication of the proceedings. The appellant was therefore found guilty and sentenced to a fine of RM50,000, in default, 50 days imprisonment. Hence, the appeal by the appellant on the ground that, some one and a half years after the filing of the first statutory declaration, he had discovered that the first statutory declaration verifying the liquidator's account covering the period from 29 March 2011 until 20 September 2011 was actually a mistake and accordingly lodged the second Form 75 with the accompanying second statutory declaration. The appellant had also denied that the second Form 75 was connected with the filing of the removal application.

Held (dismissing appeal; affirming decision and sentence by High Court) Per Idrus Harun JCA delivering the judgment of the court:

(1) The figures had indeed been changed in the second Form 75. The appellant's sharp and sudden vicissitudes of his stand in the second Form 75, accompanied with his declaration on oath in the second statutory declaration attesting to the truth of the account of his receipts and payments covering only the period from 10 May 2011 to 29 September 2011, in effect showed that the appellant no longer acknowledged the payments and receipts for the period from 29 March 2011 to 29 May 2011 which he had earlier acknowledged on oath in the first Form 75, and had in consequence, rendered it impossible to tell which of his statement was true. (para 17)

(2) Mindful of his professional background and the fact that he had possession of all the books of the company, it would be logical to infer that the appellant would not have attested to the truth of the account in the first Form 75 if he had considered it as unacceptable. The appellant had failed to offer some semblance of credible explanations as to why he altered the figures in the amended second Form 75 and did not acknowledge the payments and receipts which he had earlier acknowledged in the first Form 75. Without doubt, there could not be two versions of 'a full and true account' in both differing first and second statutory declarations. (paras 22, 23 & 24)

(3) There was moreover the gap of one and a half years after the first Form 75 was filed when the appellant lodged the second Form 75. As a qualified and reputable chartered accountant and the approved liquidator of the company, it was unthinkable that the appellant would

have made the alleged errors and allowed the first Form 75 with such alleged attendant errors to remain lodged with the Registrar of Companies in that state for a long period of time. (para 18)

(4) The alterations, which were made one month after the applicants' supporting affidavit in the removal application, would clearly and not unfathomable to suggest that the appellant did so to thwart the removal application filed by the applicants and would only lead to an irresistible conclusion that the appellant had tampered with the documentary evidence in an attempt to pervert the administration of justice. (para 19)

(5) The first Form 75 and statutory declaration was material as well as an important documentary evidence in the applicants' removal application. Hence, the conduct of the appellant in tampering with material documentary evidence clearly amounted to an interference with the due administration of justice and constituted contempt of court. The appellant had not just acted in a manner which was likely to interfere with the proper administration of justice but had actually directly interfered with it by the positive act of amending the first Form 75 by way of lodging the second Form 75 and affirming the second statutory declaration. (paras 20, 25 & 26)

(6) The amendment of the first Form 75 by way of the lodgement of the second Form 75 and the second statutory declaration without good and credible reasons was, beyond any argument, sufficiently serious and connected to the removal application proceedings. Though *mens rea* was not a necessary element for contempt, there was clear *mens rea* in the conduct of the appellant in lodging the second Form 75 and second statutory declaration. The conduct of the appellant in the whole episode constituted contempt of court. (paras 29 & 30)

Bahasa Malaysia *Translation Of Headnotes*

Jotang Wires & Cables Sdn Bhd, syarikat tersebut, telah digulungkan pada 29 Mac 2011 menurut perintah mahkamah dan perayu telah dilantik sebagai pelikuidasi. Perayu memfailkan suatu guaman bagi pihak syarikat tersebut terhadap pemohon-pemohon (responden pertama dan kedua), pengarah-pengarah dan pemegang-pemegang saham syarikat tersebut sebelum ia digulungkan, menuntut jumlah yang mana didakwa telah disebabkan oleh pemohon-pemohon dibuat oleh syarikat tersebut antara 29 March 2011 dan 27 Mei 2011 selepas penggulungan syarikat tersebut. Guaman tersebut, walau bagaimanapun, telah dibatalkan oleh Mahkamah Tinggi. Kemudian, pemohon-pemohon memohon untuk menyingkirkan perayu sebagai pelikuidasi syarikat tersebut ('permohonan penyingkiran') atas alasan-alasan bahawa perayu telah gagal melakukan tanggungjawabnya sebagai pelikuidasi bagi syarikat tersebut secara *bona fide* bagi kepentingan kesemua pihak yang relevan. Permohonan tersebut dibenarkan dan perayu disingkirkan sebagai pelikuidasi syarikat tersebut. Hakim Mahkamah Tinggi, antara lain,

mendapati bahawa perayu telah mengubah Borang 75 yang telah dikemukakan sebelum ini kepada Pendaftar Syarikat menurut s. 281 Akta Syarikat 1965 ('Akta') dan tindakan tersebut dianggap sebagai salah laku teruk dan adalah gangguan kepada prosiding mahkamah yang sedang berlangsung dan berkemungkinan bersifat menghina mahkamah. Berdasarkan kertas-kertas kausa yang difailkan bagi permohonan penyingkiran, pemohon-pemohon memfailkan permohonan bagi perintah komital terhadap perayu berikutan A. 52 k. 4 Kaedah-Kaedah Mahkamah 2012 ('KKM'). Afidavit sokongan bagi permohonan kebenaran di bawah A. 52 k. 4 KKM menunjukkan bahawa pemohon-pemohon, dalam afidavit sokongan bagi permohonan penyingkiran, telah menyatakan bahawa perayu telah memfailkan Borang 75 ('Borang 75 pertama') dengan akuan berkanun ('akuan berkanun pertama') dengan Pendaftar Syarikat. Walau bagaimanapun, dalam jawapan kepada afidavit sokongan pemohon-pemohon, perayu mengikrarkan afidavit di mana perayu telah mengekshibitkan Borang 75 yang nyata berbeza ('Borang 75 kedua'). Alasan-alasan yang disandarkan oleh pemohon-pemohon adalah, antara lain: (i) perayu telah mengusik keterangan dokumentar semasa penjalanan litigasi; (ii) perayu telah membuat kenyataan-kenyataan palsu di bawah sumpah; dan/atau (iii) perayu telah, dengan niat, mencuba untuk mengelirukan mahkamah dan mengganggu pentadbiran keadilan dengan menukar jumlah dalam Borang 75 pertama semasa litigasi berjalan. Hakim Mahkamah Tinggi mendapati bahawa pemohon-pemohon telah membuktikan melampaui keraguan munasabah bahawa perayu telah melakukan penghinaan mahkamah dengan mengganggu pentadbiran keadilan yang sepatutnya yang mengakibatkan risiko kemudaratan kepada pemutusan prosiding secara adil dan wajar. Perayu oleh itu didapati bersalah dan dikenakan hukuman denda sebanyak RM50,000, jika gagal membayar, penjara 50 hari. Oleh itu, perayu merayu atas alasan bahawa lebih kurang satu setengah tahun selepas pemfailan akuan berkanun pertama, dia mendapati bahawa akuan berkanun pertama yang mengesahkan akaun pelikuidasi yang meliputi tempoh dari 29 Mac 2011 sehingga 20 September 2011 adalah sebenarnya silap dan dengan itu mengemukakan Borang 75 kedua dengan akuan berkanun kedua. Perayu juga menafikan bahawa Borang 75 kedua berkait dengan pemfailan permohonan penyingkiran.

Diputuskan (membenarkan rayuan; mengesahkan keputusan dan hukuman oleh Mahkamah Tinggi)

Oleh Idrus Harun HMR menyampaikan penghakimah mahkamah:

(1) Sememangnya jumlah-jumlah yang terdapat dalam Borang 75 kedua telah diubah. Perubahan licik dan mengejut oleh perayu terhadap pendiriannya dalam Borang 75 kedua, di samping perakuan secara bersumpah dalam akuan berkanun kedua memperakui kebenaran kenyataan penerimaan dan bayaran-bayaran meliputi tempoh dari 10 Mei 2011 sehingga 29 September 2011, sebenarnya menunjukkan bahawa perayu tidak lagi mengakui bayaran-bayaran dan penerimaan-

penerimaan bagi tempoh dari 29 Mac 2011 sehingga 29 Mei 2011 yang telah diperakui atas sumpah sebelumnya dalam Borang 75 pertama, dan oleh itu, menjadikannya mustahil untuk menerima kenyataan mana yang benar.

(2) Menyedari latar belakang profesionalnya dan fakta bahawa dia mempunyai milikan kesemua akaun syarikat, adalah logik untuk menganggap bahawa perayu tidak akan memperakui kebenaran akaun dalam Borang 75 pertama jika dia menganggapnya sebagai tidak boleh diterima. Perayu telah gagal untuk menawarkan penjelasan yang boleh dipercayai tentang mengapa dia mengubah jumlah-jumlah dalam Borang 75 kedua dan tidak mengakui bayaran-bayaran dan penerimaan-penerimaan yang telah diperakuinya sebelum itu dalam Borang 75 pertama. Tanpa diragui, tidak boleh ada dua versi 'a full and true account' dalam kedua-dua akaun berkanun pertama dan kedua.

(3) Malahan terdapat jurang tempoh selama satu setengah tahun selepas pemfailan Borang 75 pertama apabila perayu mengemukakan Borang 75 kedua. Sebagai akauntan berkanun yang berkelayakan dan bereputasi baik dan pelikuidasi yang diluluskan bagi syarikat tersebut, adalah tidak boleh diterima bahawa perayu akan melakukan kesilapan yang didakwa dan membenarkan Borang 75 pertama dengan kesilapan di dalamnya untuk kekal dengan Pendaftar Syarikat dalam keadaan tersebut bagi satu tempoh yang lama.

(4) Perubahan, yang mana dibuat sebulan selepas afidavit sokongan pemohon-pemohon dalam permohonan penyingkiran tersebut, jelas menyarankan bahawa perayu berbuat demikian untuk menghalang permohonan penyingkiran yang difailkan oleh pemohon-pemohon dan hanya akan menjurus kepada kesimpulan yang tidak boleh disangkal bahawa perayu telah mengusik keterangan dokumentar dalam cubaan untuk memutarbelitkan pentadbiran keadilan.

(5) Borang 75 dan akuan berkanun pertama adalah keterangan dokumentar penting dalam permohonan penyingkiran oleh pemohon-pemohon. Oleh itu, tindakan perayu mengusik keterangan dokumentar penting tersebut jelas membentuk gangguan kepada pentadbiran keadilan yang wajar dan terjumlah kepada penghinaan mahkamah. Perayu bukan sahaja telah bertindak secara yang berkemungkinan mengganggu pentadbiran keadilan yang wajar tetapi telah sebenarnya campur tangan secara langsung dengannya melalui tindakan positif meminda Borang 75 pertama dengan mengemukakan Borang 75 kedua dan mengikrarkan akuan berkanun kedua.

(6) Pindaan kepada Borang 75 pertama dengan mengemukakan Borang 75 kedua dan akuan berkanun kedua tanpa sebab-sebab yang baik dan boleh dipercayai adalah, sememangnya, amat serius dan berkait dengan prosiding permohonan penyingkiran. Walaupun *mens rea* adalah unsur

A yang tidak diperlukan bagi penghinaan mahkamah, jelas wujud *men rea* dalam tindakan perayu mengemukakan Borang 75 kedua dan akuan berkanun kedua. Tindakan perayu dalam keseluruhan peristiwa tersebut terjumlah kepada penghinaan mahkamah.

Case(s) referred to:

B *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 CLJ 401 FC* ***(refd)***
Murray Hiebert v. Chandra Sri Ram [1999] 4 CLJ 65 CA ***(refd)***
Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***
Tiong Cheng Peng & Anor v. Ker Min Choo & Ors [2014] 4 CLJ 773 HC ***(refd)***

C **Legislation referred to:**
Companies Act 1965, ss. 232(1), 281, 364(2)
Rules of Court 2012, O. 52 rr. 3, 4
Statutory Declarations Act 1960, s. 3

For the appellant - NG Vinod (Mohd Sofian Shamsudin with him); M/s Tam Cheng Yau & Co

D *For the respondent - Justin Voon Tiam Yu (Yoong How Vey & Ryan Chu Soon Wei wih him); M/s Moi, NK Koh & Chee*

[Appeal from High Court, Johor Bahru; Originating Petition No: 26-4 Year 2008 (4)]

Reported by S Barathi

E

JUDGMENT

Idrus Harun JCA:

Introduction

F

[1] The appeal in the present instance arose out of the decision of the High Court on 16 February 2014 and 19 February 2014 allowing the first and second respondents' (the applicants) application to commit the appellant for contempt of court emerging from certain evidence given by the appellant at the proceedings for his removal as a liquidator which disclosed alterations of a sworn statement given by the appellant in a document submitted to the registrar of companies.

G

Background Of Case

[2] On 29 March 2011, Jotang Wires & Cables Sdn Bhd (the company) was wound up pursuant to a court order made by consent of the parties and the appellant at that point of time was appointed the liquidator of the company. The petitioners, namely Tiong Cheng Peng and Liew Yen Sin, were the minority shareholders of the company.

H

[3] The applicants were the directors and shareholders of the company before it was wound up. They were also named as the first and second respondents in the petition to wind up the company.

I

[4] The events which ultimately culminated in the contempt proceedings began with the filing of a Civil Suit No. 22 NCVC-113-03-2012 (the suit) by the appellant on behalf of the company on 26 March 2012 against the applicants claiming the sum of RM1,132,686.49. The claims were premised principally on the wrongful payments of the said sum which the appellant alleged the applicants had caused the company to make between 29 March 2011 to 27 May 2011 after the winding up of the company which were deemed to be dispositions of property and therefore were unlawful under the Companies Act 1965. The suit however was struck out by the learned High Court Judge on 25 March 2013 on the basis that the appellant had failed to comply with an "unless order" by the court and the failure to fulfil an undertaking made by the appellant's solicitors.

[5] On 17 April 2013, in the aftermath of the proceedings of the suit, the applicants by way of Originating Petition No. 26-4 Year 2008 sought to remove the appellant as the liquidator for the company (the removal application).

[6] The grounds relied on in the removal application essentially were that the appellant had failed to discharge his duties as the liquidator for the company *bona fide* in the interest of all the relevant parties. He had, it was alleged, placed himself in a position of serious conflict of interest by acting in a biased and partial manner in favour of the petitioners. The application was allowed by the court in accordance with s. 232(1) of the Companies Act 1965 on 26 September 2013 and pursuant thereto the appellant was removed as the liquidator of the company.

[7] The decision of the High Court in respect of the removal application is reported in *Tiong Cheng Peng & Anor v. Ker Min Choo & Ors* [2014] 4 CLJ 773; [2014] 9 MLJ 311 and is noteworthy for its relevance to the instant appeal. The appellant, we observe, was removed as the liquidator for the company on the grounds of misconduct, failure to act impartially and acting in a biased manner. The learned judge, *inter alia,* found that the appellant had changed Form 75 which he had earlier lodged with the registrar of companies pursuant to s. 281 of the Companies Act 1965 in the course of litigation. The appellant's conduct in altering the statutory Form 75, according to the learned judge, could be considered serious and grave misconduct and tantamount to interference with ongoing court proceedings and was possibly contemptuous. We reproduce below the relevant excerpts from the learned judge's judgment for the removal application:

> [19] It is important to note that the Form 75 contains a declaration on oath by the deponent affirmed before a commissioner of oaths attesting categorically to the truth of the statement. The time periods and figures had been changed in the second Form 75 significantly, rendering it impossible for both statements to be true and correct. In effect, Teo had inexplicably changed his position and no longer acknowledged payments

A and receipts for the period '29 March 2011-9 May 2011' which amounted to the most substantial sums. The inordinate delay in making the alterations some one and a half years later and its timing after this application was filed raised grave doubts as to the *bona fide* of Teo's act which was alleged to be an afterthought.

B [20] The gravity and seriousness of making a false statement on oath cannot be overstated. The entire credibility of Teo was called into question. He had failed in his duty to disclose all material facts in a frank, candid and honest manner. His sworn statement which was subsequently altered, showed a propensity for not disclosing the whole truth even on oath and instead, making false statements to circumvent proceedings C commenced by the applicants.

CONCLUSION

[21] To sum up, upon consideration of all the facts and evidence and the chronology of events as alluded to, I found that the applicants had made out a *prima facie* case of misconduct against the liquidator ('Teo') in the D discharge of his fiduciary duties to the seventh respondent company and all its contributories.

...

[24] Teo's conduct in altering the statutory Form 75 to suit his own ends could be considered serious and grave misconduct that caused loss of E trust and confidence in his integrity. It was no less than tampering with an official statement given on oath to the registrar of companies, Teo had sworn to the truth and correctness to the statement which he decided to inexplicably alter some one and a half years later. It was also tantamount to interference with ongoing court proceedings and was, possibly, F contemptuous.

[8] The appellant appealed against the above decision but the appeal was in due course withdrawn.

[9] From the record of appeal and as clearly manifested in the above decision, the application for an order of committal against the appellant G pursuant to O. 52 r. 4 of the Rules of Court 2012 emanated from the cause papers which were filed for the removal application involving the appellant as the liquidator for the company. The application was founded on the applicants' interest in the affairs of the company, being the directors, shareholders and contributories thereof.

H **[10]** The facts gleaned from the applicants' statement and the affidavit in support of the application for leave pursuant to O. 52 r. 3 of the Rules of Court 2012 explicitly showed that the applicants had affirmed their affidavit in support of the removal application dated 16 April 2013 stating that the appellant had filed Form 75 (the first Form 75) with the registrar of I companies. The first Form 75 contained matters in relation to the liquidator's account of receipts and payments and statement of the position in the winding up of the company which according to the applicants in their

affidavit in support was clear in substance that the alleged payments made after the winding up action of the company had already been recognised by the appellant as valid and proper receipts and payments. It is essential to mention that an integral part to the first Form 75 is a statutory declaration (the first statutory declaration) which the appellant was statutorily required to affirm under s. 281 of the Companies Act 1965 and which he had in fact affirmed on 21 November 2011 verifying on oath that the account of receipts and payments contained a full and true account of the appellant's receipts and payments in the winding up of that company from 29 March 2011 to 29 September 2011.

[11] However, in reply to the applicants' affidavit in support, the appellant affirmed an affidavit on 29 May 2013 wherein the appellant had exhibited a completely different Form 75 (the second Form 75) showing significant increase in the figures on total payments and receipts covering the same period from 29 March 2011 to 29 September 2011 which the appellant did by preparing two separate accounts of receipts and payments between 29 March 2011 until 9 May 2011 and 10 May 2011 until 29 September 2011. It is important to note that though the accounts had also covered the period between 29 March 2011 to 9 May 2011, the statutory declaration dated 23 May 2013 (the second statutory declaration) disclosed that the appellant acknowledged only the receipts and payments covering a shorter period from 10 May 2011 to 29 September 2011 by attesting to the truth thereof.

[12] This sudden turn of event had led the applicants to make the application for an order of committal against the appellant based on the grounds, *inter alia*, that:

(a) the appellant had tampered with the documentary evidence during the course of litigation;

(b) the appellant made false statements under oath; and/or

(c) the appellant intentionally tried to confuse the court and interfere with the administration of justice by changing the figures in the first Form 75 whilst litigation was under way.

High Court Decision

[13] The learned judge found that the applicant had proved beyond reasonable doubt that the appellant had committed contempt of court by interfering in the proper administration of justice that had resulted in a real risk of prejudice to a fair and proper adjudication of the proceedings. His Lordship accordingly found the appellant guilty and after a plea in mitigation, sentenced him to a fine of RM50,000 in default 50 days imprisonment.

A **Summary Of Grounds Of Appeal Raised By The Appellant**

[14] We were pressed with the argument urged for the appellant that the second statutory declaration was filed by the appellant some one and a half years after the first statutory declaration was filed on 21 November 2011 when he had discovered *circa* 2013 that the first statutory declaration B verifying the liquidator's account covering the period from 29 March 2011 until 20 September 2011 was actually a mistake. According to learned counsel, this was due to the fact that the appellant had indeed taken charge as the liquidator for the company effective 10 May 2011, hence he could only verify the liquidator's account covering the period from 10 May 2011 C until 29 September 2011. The appellant accordingly lodged the second Form 75 with the accompanying second statutory declaration. It was further contended that the appellant only discovered the said "genuine mistakes" a year and a half after the first statutory declaration was filed, adding that it was so discovered after the applicants had filed the removal application. D However, the appellant strenuously denied that the second declaration had something to do and was in connection with the filing of the removal application. On the other hand, it was submitted, the appellant was under a duty in law to do so, and if we understand him correctly, if he failed to do so it would entail liability against him under s. 364(2) of the Companies Act 1965 for making a false or misleading statement in any material particular E in any report, return or other document. The appellant's counsel had also contended that the applicants had to show evidence that the alterations which were made in the second Form 75 was indeed wrong and thus justifying the committal order against the appellant.

F **Decision**

[15] In his affidavit in reply in respect of the committal application affirmed on 31 December 2013, the appellant, as regards the first Form 75, averred that there were mistakes in the accounts filed *vide* the said first Form 75. However, it is significant to note that the appellant did not specify in the G said affidavit what these mistakes were. It was learned counsel's statement in his written submission, which was not pleaded in the affidavit in reply affirmed on 31 December 2013, that the mistake was due to the fact that the appellant had taken charge of the company on 10 May 2011 and as such he could verify the liquidator's account only from 10 May 2011 until H 29 September 2011.

[16] Upon perusal of the record of appeal we came across the appellant's affidavit in reply affirmed on 29 May 2013 with respect to the removal application, wherein it was stated that he had filed an amended liquidator's accounts in the second Form 75 to separate the receipts and payments made I before 11 May 2011 and those after 11 May 2011 as the previous liquidator's accounts in the first Form 75 filed with the registrar of companies did not

separate the receipts and payments during and after the said date. An important point worthy of mention at this stage is that nowhere in the said affidavit was any positive averment made by the appellant that the first statutory declaration was a mistake.

[17] Our careful scrutiny of both Forms 75 disclosed that the figures had indeed been changed in the second Form 75 showing a remarkable increase in the figures on total payments and receipts in the accounts covering both periods between 29 March 2011 until 9 May 2011 and between 10 May 2011 until 29 September 2011. It may be recalled that both Forms 75 contained statutory declarations in which the appellant had attested to the truth of the accounts of his receipts and payments and the statement of the position of the company in the winding up. Thus, it might be apposite at this stage to consider what this situation had inevitably entailed. In our judgment, the appellant's sharp and sudden vicissitudes of his stand in the second Form 75, accompanied with his declaration on oath in the second statutory declaration attesting to the truth of the account of his receipts and payments covering only the period from 10 May 2011 to 29 September 2011, in effect showed that the appellant no longer acknowledged the payments and receipts for the period from 29 March 2011 to 29 May 2011 which he had earlier acknowledged on oath in the first Form 75, and had in consequence, rendered it impossible to now tell which of his statements was true.

[18] There is moreover the gap of one and a half years after the first Form 75 was filed when the appellant lodged the second Form 75 on 28 May 2013. It would not thus be an exaggeration to say that the appellant was indeed in a deep long slumber for one and a half years before he suddenly woke up and rather unexpectedly, had shifted his position by filing the second Form 75. The long delay certainly could not support as genuine correction of the account especially when it was made in the wake of the removal application that would determine his fate as the liquidator of the company. As a qualified and reputable chartered accountant and the approved liquidator of the company, it is unthinkable that the appellant would have made the alleged errors and allowed the first Form 75 with such alleged attendant errors to remain lodged with the registrar of companies in that state for a long period of time.

[19] It seems too much of a coincidence and indeed appears unlikely that it happened by chance for this court to accept the appellant's act in filing the alterations in the second Form 75 as a *bona fide* one. The alterations, we observe, made one month after the applicants' supporting affidavit in the removal application, would clearly and not unfathomable to suggest, that the appellant did so to thwart the removal application filed by the applicants and would only lead to an irresistible conclusion that the appellant had tampered with the documentary evidence in an attempt to pervert the administration of justice.

[20] The first Form 75 and statutory declaration was a material as well as an important documentary evidence in the applicants' removal application. We should say that in the context of s. 281 of the Companies Act 1965 under which Form 75 is mandatorily required to be lodged by a liquidator with the registrar of companies, the form is an important statutory instrument by which the liquidator is made to declare as true an account of his receipts of any money and payments that he has made, including any dividend paid to creditors as well as any amount he has invested. The statutory declaration that the appellant had made in this regard is governed by the Statutory Declarations Act 1960 and needless to say that making a false statutory declaration is, by virtue of s. 3 thereof, an offence punishable under the Penal Code. The appellant as an approved liquidator would have been fully aware of his obligation to ensure the accuracy and correctness of his verification in the first statutory declaration in the first Form 75.

[21] In his letter to the registrar of companies dated 28 May 2013, the appellant claimed that the new statutory declaration verifying the liquidator's account could only be for the period from 10 May 2011 to 29 September 2011 the former date according to him being the date he took charge of the company. We should say on this point that as the court appointed him as the liquidator for the company on 29 March 2011, his appointment became effective from this date and therefore he had access to all the previous books of the company. In fact the company was effectively in liquidation from 29 March 2011 when the court ordered for it to be wound up. He subsequently lodged the first Form 75 and the statutory declaration on 21 November 2011 which was seven and a half months after his appointment as the company's liquidator.

[22] The appellant would not have been in a position to lodge the first Form 75 if he did not have access to all the previous books of the company. In fact the appellant by his own admission in his affidavit in reply dated 29 May 2013 stated that the applicants had submitted the company's statement of affairs on 27 June 2011. It is somewhat strange that if the reason which he gave in his letter to the registrar of companies was true, obviously he could have prepared the first Form 75 verifying the liquidator's account from 10 May 2011 to 29 September 2011 as it was lodged on 21 November 2011 which was six months after 10 May 2011, the date he allegedly took charge of the company and about four months after he received the statement of affairs. He had ample time to do so. Instead, he lodged the first Form 75 attesting to the truth of the account of his receipts and payments covering the period from the date the company was wound up which was 29 March 2011 until 29 September 2011. Mindful of his professional background and the fact that he had possession of all books of the company, it would be logical to infer that he would not have attested to the truth of the account in the first Form 75 if he considered it unacceptable. He moreover meekly explained in

his affidavit in reply in this committal application as to why he lodged the second Form 75 in which the figures of total receipts and payments for the period from 29 March 2011 to 29 September 2011 were altered stating that it was so altered in order to correct the errors that had occurred.

[23] On a critical examination of the various affidavits and documentary exhibits in the record of appeal and viewed objectively, the logical and inevitable conclusion which can be drawn therefrom is that the appellant failed to offer some semblance of credible explanations as to why he altered the figures in the amended second Form 75 and did not acknowledge the payments and receipts from 29 March 2011 to 9 May 2011 which he earlier acknowledged in the first Form 75.

[24] Without doubt, there cannot be two versions of "a full and true account" in both differing first and second statutory declarations.

[25] The conduct of the appellant in tampering with material documentary evidence before the court, in our judgment, clearly amounted to an interference with the due administration of justice and constituted contempt of court. We wish to express our understanding of the law of contempt of court in that primarily for there to be an interference with the administration of justice, only a likelihood of such interference would suffice. The Court of Appeal decision in the case of *Murray Hiebert v. Chandra Sri Ram* [1999] 4 CLJ 65; [1999] 4 MLJ 321 on the correct test for contempt of court held:

> To constitute contempt of court, it is not necessary to prove affirmatively that there had been an actual interference with the administration of justice by reason of offending statements. It is enough if it is likely or it tends in any way to interfere with the proper administration of justice (per Dua CJ in *Brig ET Sen (Retd) v Edatata Narayanan & Ors* 1969 AIR Delhi 201).

[26] The appellant in this regard had not just acted in a manner which was likely to interfere with the proper administration of justice but had actually directly interfered with it by the positive act of amending the first Form 75 by way of lodging the second Form 75 and affirming the second statutory declaration [see the *Monatech's* case *(supra)*].

[27] We are entirely in agreement with the learned judge when His Lordship held:

> ... To reiterate, TCH (the respondent) had tampered with or manipulated documentary evidence by altering the Form 75 after a lapse of more than a year and coincidentally, in a matter of a month or so after the OS for his removal was filed with the supporting affidavit exhibiting the Form 75 that he had originally lodged with the ROC affirming ... to be true and correct. In his affidavit in opposition, which exhibited the substantially altered Form 75 which was also affirmed on oath to be truth TCH had not proffered any reasonable or credible explanation for the highly

A questionable and suspicious act done at this crucial stage in the midst of proceedings affecting his position as liquidator. The coincidence, viewed objectively, was too striking glaring to be accepted as *bona fide* and unintentional ...

The original statements were plainly material evidence before the Court in the pending litigation. From the circumstances, the only inescapable and irresistible conclusion that can be drawn was that the act complained of was done with the intention of influencing the outcome of litigation and calculated to have that effect. So was the fact that it was likely or tended any way to interfere with the proper administration of justice, therefore, constituted contempt of Court.

[28] It is clear in the authorities that the circumstances and categories of facts which may constitute contempt of court are never closed and the scope for development is limitless (see *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401; [2002] 4 MLJ 241). But in order for an act to amount to a contempt of court the alleged contemptuous act must be sufficiently serious and connected with the proceedings in question. The Federal Court in the case of *Monatech (supra)* held:

The Court of Appeal in finding of the facts of the case that there was commission of contempt of court relied on what Lloyd LJ in *Attorney General v. Newspaper Publishing Plc*, *inter alia* said at p. 378: The act must be sufficiently serious and sufficiently closely connected with the particular proceedings.

[29] The amendment of the first Form 75 by way of the lodgement of the second Form 75 and the second statutory declaration without good and credible reasons was beyond any argument sufficiently serious and connected to the removal application proceedings. We have absolutely no hesitation in finding that this was indeed an interference with the administration of justice warranting a committal order. Though *mens rea* is not a necessary element for contempt, (*Murray Hiebert v. Chandra Sri Ram (supra)*), we are satisfied that there was clear *mens rea* in the conduct of the appellant in lodging the second Form 75 and the second statutory declaration.

[30] The conduct of the appellant in the whole episode constituted contempt of court. In the case of *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458 the Federal Court adopted the definition of contempt in *Oswald's Contempt of Court* when it held in the judgment of Tun Arifin Zakaria CJ as follows:

... *Oswald's Contempt of Court* (3rd Edn.), at p.6 gives a general definition of contempt of court as follows:

To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnessed during litigation.

Conclusion

[31] In the premises and for the reasons discussed, the circumstances of the case point to the inevitable conclusion that the appellant had in fact committed a contempt of court. The learned judge correctly decided that the applicants had proved beyond reasonable doubt that the appellant had committed contempt of court by interfering in the administration of justice. As regards the sentence, we were satisfied that the sentence meted out by the learned judge was not perverse or wrong. We accordingly dismissed the appeal, affirmed the decision of, and sentence imposed by, the learned judge. We ordered cost of RM10,000 to the respondent and deposit to be refunded to the appellant.